



**State of New Hampshire
Consumer Protection and
Antitrust Bureau**

Volume 2 Issue 2

- Consumer Protection Bureau wins cases against unethical contractors.
- Everything you need to know about the National Do Not Call Registry!
- Buyer beware-Federal Court rules Simon Mall Gift Cards exempt from gift certificate rules.



**The New Hampshire
Attorney General and
AARP New Hampshire
Team up together to
FIGHT FRAUD—
SHRED INSTEAD!**

November 4, 2006

In front of the State House
Consumers will watch their
personal identity papers get
pulverized in
"The Paper Predator"

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WWW.DOJ.NH.GOV/CONSUMER
Call toll-free 1-888-468-4454**

The Consumer **ADVOCATE**

Consumer Protection Bureau successful in court against area contractors - Atwater, Greene and Erickson are guilty

In early July, Attorney General Kelly A. Ayotte announced that a Belknap County Superior Court jury found Tracy Dale Atwater guilty on five Class A felony charges of Theft by Unauthorized Taking or Transfer after a two-day trial.

The charges brought against the defendant by the Consumer Protection and Antitrust Bureau (the "Bureau") of the Office of the Attorney General arose out of Mr. Atwater's operation of a home contracting business. The indictments alleged that Mr. Atwater and N.E. AtwaterMorin, LLC obtained substantial deposits from consumers for home contracting services, which he then failed to provide or provided only minimally. Despite Mr. Atwater's promises

to consumers, he failed to complete the contracted-for work or to fully refund the consumers' money.

Mr. Atwater has operated several businesses since 1998, including: Zygo Research, Inc.; Old Mill Woodworks, LLC; T. Dale Atwater, LLC; Oakwood Builders, LLC; N.E. AtwaterMorin, LLC, Black Brook Builders, LLC; and Centerline Excavating, LLC.

Mr. Atwater was sentenced to 4 – 10 years at the New Hampshire State Prison and 7½ - 15 years, suspended. Conditions of his sentence include that he pay restitution to the victims and, as an additional condition of his sentence, for a period of 20

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Simon gift card ruling signals disturbing trend in Federal law

Attorney General Kelly A. Ayotte announced recently that Federal District Court Judge Stephen McAuliffe ruled that the State's gift certificate law does not apply to the Simon Gift Card in its current form. The Court reasoned that because the Simon Gift Card is issued by two federally regulated financial institutions, and because those institutions set the terms and conditions of the Card and collect and retain the fees related to the Gift Cards, the Simon Gift Card is a "banking product" and therefore federal, not state law, applies. Gift cards not issued by a federal bank are not affected by this decision.

The Simon Gift Card is sold by Simon Property Group, the owner or manager of the three largest shopping malls in New Hampshire; The Mall of New Hampshire, the Pheasant Lane Mall and the Rockingham Park Mall. Simon sells the Gift Card in the malls it manages and online. Simon be-

gan selling the Gift Cards in New Hampshire in 2003.

In 2003, New Hampshire amended the Consumer Protection Act to forbid expiration dates on gift certificates as well as administrative fees that reduce the value of the gift certificates. Shortly after the amendments took effect in 2004, New Hampshire informed Simon that its gift cards violated the Consumer Protection Act. In response, Simon filed a law suit in federal court, claiming that the state law is preempted by federal statute and regulations. In November of 2004, the State also filed suit against Simon.

In 2005, Simon undertook a major redesign of its Gift Card Program, eliminating its original relationship with Bank of America, and restructured its program to increase the involvement of banking partners. In September of 2005, Simon entered into a

(Simon Gift Card - Continued on page 2)

years, he is prohibited from owning, operating, managing or controlling a home contracting business or any other kind of business in the State of New Hampshire, where he would take deposits prior to delivering goods and services. He was also ordered to complete any counseling, treatment and educational programs as recommended by the Department of Corrections.

In August, Attorney General Ayotte announced that Allen Greene pled guilty to two felony theft charges in Merrimack County Superior Court. The convictions arose out of Mr. Greene's operation of home contracting businesses named Sakea Roofing & Remodeling, Pride Painting & Remodeling and Leadville Construction.

The Bureau received over 25 complaints from consumers against Mr. Greene and his businesses. The complaints alleged that the consumers paid for home contracting services and Mr. Greene, either failed to perform any of the contracted-for work, performed only part of the work or failed to perform the work in a workmanlike manner.

Mr. Greene was sentenced to the House of Corrections for 12 months and received an additional suspended prison sentence. He was also sentenced to a total of ten years probation. Additional conditions of his sentence include that he pay restitution to consumers totaling more than \$385,000, and that he is prohibited from owning, operating, managing or controlling a home contracting business in the State of New Hampshire for a period of ten years.

Also this month, Attorney General Ayotte announced that Douglas Erickson pled guilty in Rockingham County Superior Court to one felony charge of Perjury. Mr. Erickson operated a basement waterproofing business under the

name of Dry-Co Basement Waterproofing. He also operated the same kind of business under the name of Seacoast Waterproofing.

The State filed a civil action against Mr. Erickson in 2004. In January of 2005, the State and Erickson entered into a settlement agreement, which required Mr. Erickson to pay \$50,000 to consumers for restitution. Prior to the settlement, the State required Mr. Erickson to complete a sworn financial affidavit on which he listed his assets. After the settlement agreement was approved by the Court, the State alleged that Mr. Erickson had lied on his financial affidavit by not listing all of his assets.

The State filed four criminal perjury charges against Mr. Erickson. In exchange for his guilty plea to one of the perjury charges, the State dropped three of the charges. As a condition of his sentence, Mr. Erickson must pay an additional \$75,000 in consumer restitution by February 1, 2007. If he fails to do so, he will be sentenced to 60 days at the House of Corrections. Erickson will also be placed on probation for a period of five years.

Attorney General Ayotte said: "Our goal is to protect consumers from unscrupulous businesses and if an individual lies under oath in an effort to avoid his or her restitution obligations to consumers, we will aggressively pursue that person."

Attorney General Ayotte said: "Our office continues to pursue home contracting businesses, and any other businesses, that steal money from consumers by taking deposits, promising to perform services and provide goods and then failing to do so." Anyone who is considering hiring a home contractor or any business should carefully examine the business's record by checking references and should call our office's Consumer Protection hotline toll free at 1-888-468-4454 as well as contact the Better Business Bureau.

new agreement with US Bank and MetaBank. This newly structured program was found to be subject to federal preemption.

"There is a disturbing trend in federal law, where laws put in place by states to protect the health, safety and welfare of their citizens are repeatedly being overwritten. As an example, HR 3997, currently pending in Congress seeks to preempt New Hampshire's recently passed credit freeze law and override it with a weaker version that is much less protective of consumers," Attorney General Ayotte said.

"Unfortunately, the Simon Gift Card ruling is yet another disappointing example of this trend. As Attorney General, I am concerned about this trend toward federal preemption of traditional state prerogatives. In my view,

State regulators are closer and more accountable to the people of New Hampshire," Attorney General Ayotte said.

The sales of the Simon Gift Cards in violation of the Consumer Protection Act before September 2005 are not affected by the federal court's decision. The Attorney General said she will continue to pursue the case pending in Superior Court against Simon for sales of cards before September 2005. Attorney General Ayotte said she will ask the state court to award restitution to consumers and impose civil penalties for cards sold to New Hampshire consumers before September 2005.

A Notice of Appeal was filed by the State of New Hampshire with the United States First Circuit Court of Appeals on August 31, 2006.



Ask Ms. Consumer Protection

The facts about the National Do Not Call List

The Consumer Protection and Antitrust Bureau receives many consumer calls on its toll-free Hotline (888-468-4454) asking questions about the *National Do Not Call Registry*. Here is a sampling of questions taken directly from the FTC website www.donotcall.gov.

1. Why would I register my phone number with the National Do Not Call Registry?

The National Do Not Call Registry allows you to limit the telemarketing calls you receive. Once you register your phone number, telemarketers covered by the National Do Not Call Registry have up to 31 days (starting January 1, 2005) to stop calling you. Your phone number will remain on the registry for five years from the date you register (unless you choose to take it off the registry or your phone number is disconnected).

2. Can I register my cell phone on the National Do Not Call Registry?

Yes, you may place your personal cell phone number on the National Do Not Call Registry. The registry has accepted cell phone numbers since it opened for registrations in June 2003. There is no deadline to register a home or cell phone number on the Registry.

You may have received an email telling you that your cell phone is about to be assaulted by telemarketing calls as a result of a new cell phone number database; however, that is not the case. FCC regulations prohibit telemarketers from using automated dialers to call cell phone numbers. Automated dialers are standard in the industry, so most telemarketers don't call consumers on their cell phones without their consent.

3. If my area code changes, do I need to re-register?

If the phone companies change the three-digit area code for your home or mobile phone number, you do not have to re-register it with the National Do Not Call Registry. The number with the new area code will be registered for you during the 90-day period when both the old and new area codes work. This is known as the Permissive Dialing Period.

4. I called to register my phone number, but the message said that the phone number I was calling from did not match the phone number I entered. What happened?

To register, you must call from the phone you want to register. For example, you cannot register your home phone number by calling from work.

Also, people in certain communities — such as senior living centers or university residences — have phone numbers that are hidden by a PBX (private branch exchange) telephone system and cannot be matched by the National Do Not Call system. If you live in such a community, you can register your phone number on the National Do Not Call Registry website at www.donotcall.gov.

5. Are calls from political organizations or calls soliciting for charities covered?

Political solicitations are not included in the definition of "telemarketing." Charities are not covered by the requirements of the national registry. However, if a third-party telemarketer is calling on behalf of a charity, a consumer may ask not to receive any more calls from, or on behalf of, that specific charity. If a

third-party telemarketer calls again on behalf of that charity, the telemarketer may be subject to a fine of up to \$11,000.

6. When can I file a do not call complaint?

If your number has been on the National Do Not Call Registry for at least 31 days (starting January 1, 2005) and you receive a call from a telemarketer that you believe is covered by the National Do Not Call Registry, you can file a complaint at the registry's website at www.donotcall.gov or by calling the registry's toll-free number at 1-888-382-1222 (for TTY, call 1-866-290-4236). Or you can call the New Hampshire Consumer Protection Hotline at 1-888-468-4454 or file a complaint online at www.doj.nh.gov. To file a complaint, you must know either the name or telephone number of the company that called you, and the date the company called you.

7. Can I register my fax machine with the Do Not Call Registry?

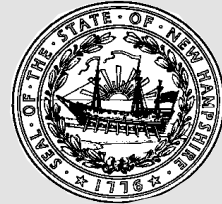
The National Do-Not-Call Registry applies only to telephone solicitations, not to faxes. The Federal Communications Commission (FCC) fax rules prohibit fax advertisements unless the sender has an existing business relationship with the consumer or permission to send the fax. On July 9, 2005, Congress enacted the Junk Fax Prevention Act to amend the unsolicited fax advertisement provisions of the Telephone Consumer Protection Act of 1981 and directed the FCC to issue regulations to implement the statute. See the FCC website at www.fcc.gov/cgb/consumerfacts/unwantedfaxes for more information about unsolicited faxes.

Special Announcement!

You can now file your consumer complaint on line at www.doj.nh.gov/consumer. You may submit a complaint electronically if you can provide all supporting documentation in a Word, Excel or PDF format.

If your documentation cannot be submitted in these formats, you may download the Complaint Form and submit it via US Postal Service, with copies of your documents, to:

**OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST BUREAU
33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301**



The New Hampshire Consumer Protection and Antitrust Bureau

The Consumer Protection and Antitrust Bureau protects consumers from unfair or deceptive business practices in New Hampshire. When businesses misrepresent, do not provide services, or provide poor quality services or products to consumers, the Consumer Protection and Antitrust Bureau will question the business's practices, and may, if necessary, take the business to court and seek civil or criminal sanctions.

The staff of the Consumer Protection and Antitrust Bureau takes phone calls from 8 a.m. to 5 p.m. each weekday. The Consumer Hotline can be reached at (603) 271-3641 or toll free at 1-888-468-4454. While this Bureau cannot offer legal advice, we can often offer suggestions to help resolve complaints between consumers and businesses, and we have a list of referral offices that are helpful with specific types of complaints.

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